THE HONOURABLE SRI JUSTICE V.ESWARAIAH

WRIT PETITION No:3219 of 2007

DATED:12-07-2007

BETWEEN:

Mangalagiri Komali @ Sudarsana Komali.

..... PETITIONER

AND

The State of Andhra Pradesh,
Rep., by its Principal Secretary,
Revenue Department,
Secretariat Buildings,
Saifabad,
Hyderabad & 3 others.

.....RESPONDENTS

ORDER:

Heard learned counsel appearing for the petitioner and the learned Government Pleader for Revenue appearing for the respondents.

2. Petitioner seeks a writ of mandamus declaring the show cause notice issued in Rc.No.1205/2005/E1, dated 19-12-2006, by the 2nd respondent, as illegal, arbitrary, and consequently direct the respondents not to interfere with the petitioner's possession and enjoyment of the land of an extent of Ac.5.04 cents situated in S.No.71/5, Paradesipalem village, Chinagadili mandal, Visakhapatnam District.

3. Petitioner questions the above show cause notice issued by the District Collector, Visakhapatnam to the petitioner as to why the assignment granted to her measuring an extent of Ac.5.04 cents in Sy.No.71/5 of Paradesipalem village, Chinagadili mandal, Visakhapatnam should not be cancelled for misrepresentation of facts. Petitioner is directed to submit explanation within seven days from the date of receipt of the said notice, but she has not filed any explanation and questioned the same in this Writ Petition contending that on a representation, dated 24-03-2001, 3rd respondent herein granted a patta for an extent of Ac.5.04 cents of dry land in Sy.No.71/5 in Paradesipalem village, Chinagadili mandal, Visakhapatnam District in 1969.

4. Clause 20 of the D-form patta 139/71 goes to show that the assignment is also liable for cancellation if it is found that it is grossly inequitable or was passed under a mistake of fact or owing to the misrepresentation or fraud in access of the limits of the authority delegated to the assigning officer under B.S.O.15 read with G.O.Ms.No.1142 Revenue, dated
19-06-1954 or that there was an irregularity in the procedure.

5. It is the case of the petitioner that there was no misrepresentation, fraud or access of the powers on the part of the authorities or any gross in-equitability or mistake of fact and the petitioner complied with all the terms and conditions of the said patta without any violation and stated that because of the acute shortage of water, Eucalyptus plantation achieved stunted growth and subsequently a well was also sunk. It is stated that in fact, she has purchased certain plants from the Forest Range Officer in 1984 and planted the same. Whileso, the then Tahsildar-cum-Mandal Revenue Officer tried to dispossess the petitioner from the land on the ground that she failed to cultivate the same, and the petitioner filed W.P. No.11032 of 1985 and obtained stay of eviction from the said land by order, dated
01-10-1985, in W.P.M.P.No.15210 of 1985 and thereafter W.P.No.11032 of 1985 was disposed of by order, dated
24-11-1988, holding that reasonable opportunity was not given to the petitioner before cancellation of the patta by order, dated 15-05-1983, and accordingly the said cancellation order, dated 15-05-1983, was passed and the petitioner was directed to submit his

explanation within three weeks from the date of receipt of the said order and on receipt of the explanation the authorities were directed to consider the same and dispose of it in accordance with law and till then *status quo* as on 15-05-1983 was directed to be maintained.

6. It is stated that thereafter, an urgent notice, dated 21-04-1990, was served to the petitioner to attend an enquiry on 23-04-1990 and though she was present no enquiry was conducted and ultimately when the respondents tried to dispossess her she filed W.P.No.17356 of 1994 wherein it was contended by the respondents that the patta was cancelled by order, dated 25-12-1990. The said Writ Petition was dismissed by order, dated 10-03-2005, and thereafter on an application the said order was set aside and restored and ultimately the said W.P.No.17356 of 1994 was disposed of on 01-02-2006 holding that the District Collector has power to cancel the patta under the Andhra Pradesh Board Standing Order 15 and in view of the contention that the show cause notice, dated 20-10-1990, was not served on the petitioner before passing the order of cancellation of D-Form patta, without dealing with the illegality or validity of the cancellation order, this Court held that the competent authority to cancel the patta is the District Collector but not the Mandal Revenue Officer and therefore, the order passed by the Mandal Revenue Officer was held to be without jurisdiction and the same was set aside. Thereafter, a show cause notice, dated 19-12-2006, has been issued.

7. Learned counsel appearing for the petitioner submits that the impugned notice is illegal and arbitrary and the extent of mis-representation in the petitioner's application, dated 24-03-2001, for grant of patta cannot be decided at this juncture after a lapse of forty five years and the patta granted in 1969 cannot be cancelled and the impugned notice seeking to cancel the patta is not *bona fide* and it is also not specific in whose favour the lands were alienated for the market value and the respondents cannot initiate action on the grounds other than that mentioned in the earlier two petitions which are the subject matters of the aforesaid two writ petitions and therefore, the show cause notice is illegal, and arbitrary.

8. Counter has been filed on behalf of the respondents stating that the patta granted in 1969 was cancelled by order, dated 15-05-1983, for violation of the conditions of the patta on the ground that the petitioner has not brought the land under cultivation, but however, this Court in W.P.No.11032 of 1995 in its order, dated 24-11-1988, while dismissing the writ petition has given an opportunity to the petitioner to submit explanation within three weeks and directed the authorities to consider the same and dispose it of according to law. However, petitioner has not submitted any explanation pursuant to the said order and therefore an urgent memo, dated 21-04-1990, was issued pursuant to which petitioner appeared on 23-04-1990 and stated that the show cause notice was not issued and therefore, the then Mandal Revenue Officer issued a show cause notice in Rc.No.2703/85, dated 20-10-1990, directing her to give explanation as to why assignment

made in her faovur should not be cancelled for violation of the assignment conditions and thereafter as she did not respond, final order in Rc.No.2703/85, dated 25-12-1990, was passed by the then Mandal Revenue Officer, Chinagadili mandal cancelling the said assignment. Against the said cancellation order petitioner filed W.P.17356 of 1994 and the same was dismissed initially on 10-03-2005, and thereafter the land was handed over to VUDA, Visakhapatnam on 02-06-2005. The said order of dismissal, dated 10-03-2005, was set aside pursuant to W.P.M.P.No.15210 of 1994 filed by the petitioner and *Status Quo* granted earlier on 21-10-2005 was ordered to be continued.

9. It is stated that prior to the order of *Status Quo* only the land was handed over to the VUDA, Visakhapatnam on
02-06-2005. It is further stated that against the action of the respondents handing over the land in favour of the VUDA, one Teegala Ramakrishnarao and two others in whose favour the land was alienated namely Smt.Gantaa Radhabai, w/o late Narasimharao and T.Anand filed W.P.No.24421 of 2005. The said land was assigned in favour of the wife of the said Ramakrishnarao and after her death the said Ramakrishnarao and two others succeeded the same and they have developed the said land and the assignee also filed W.P.No.11032 of 1985 which was disposed of directing to pass necessary orders and as no orders have been passed on the mutation application liberty was given to them to approach the Mandal Revenue Officer by making necessary application in proper form to consider the same and

pass appropriate orders in accordance with law. It is further stated that the second writ petition filed by the petitioner in W.P.No.17356 of 1994 was disposed of on 01-12-2006 only on the ground that the Mandal Revenue Officer has no jurisdiction but the District Collector has got power to cancel the patta. Thus the learned counsel appearing for the respondents submits that the District Collector is the competent authority to cancel the patta.

10. Insofar as the aforesaid contentions of the learned counsel appearing for the petitioner are concerned,
I am of the opinion that it is not just and proper to express any opinion on the said contentions as it may affect the interest of the petitioner, moreso, the said contentions have to be decided after conducting necessary enquiry and the question of impossibility of proving the genuineness of her application and whether there was any misrepresentation with regard to her statement that she was a landless poor and she worked in a kirana shop and whether her husband is a rich man and whether the subsequent acquisition of the wealth, land, and property by her husband leads to disqualification for grant of patta or for cancellation of the patta granted earlier are all the matters to be considered and decided by the District Collector.

11. In view of the aforesaid facts and circumstances, without expressing any opinion on the contentions of either of the parties, Writ Petition is disposed of permitting the petitioner to submit her explanation within ten days from today and on submission of the such explanation, 2nd respondent shall give reasonable

opportunity for personal hearing and after conducting fair and reasonable enquiry, appropriate orders may be passed in accordance with law. Till such orders are passed and served on the petitioner *Status Quo* obtaining as on today with regard to possession of the said land shall be maintained and shall also continue for a further period of ten days after passing final orders, and the final orders shall be served forthwith as and when they are passed. No order as to costs.

_____

V.ESWARAIAH,J

12th July, 2007.
Tsy